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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/601,325

Filing Date: June 20, 2003

Appellant(s): MULLER ET AL.

MAILED

JUL 13 2006

GROUP 3600

Charles N. J. Ruggiero
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 8, 2006 and the supplement to the appeal brief filed April 28, 2006 appealing from the Office action mailed June 30, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct. The after-final amendment submitted August 30, 2005 was inadvertently marked as not to be entered. It is now entered, the only change being the cancellation of claims 16-19, a reduction of issues.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. The after-final amendment submitted August 30, 2005 was inadvertently marked as not to be entered. It is now entered, the only change being the cancellation of claims 16-19, a reduction of issues.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2575835	Pohle	11-1951
4374344	Misono et al.	2-1983
5717290	Shaffer	2-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 11, 13 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pohle (US 2575835) in view of Misono et al. (US 4374344).

Pohle (figures 1-3) teaches a holding clip for fixing the position of a getter 19 in an inner surface of a container comprising: a first section including connecting element 25 and finger 26 to which the getter may couple, and the portion of the legs 22 first bent up as shown in figure 3; and a second section for supporting the first section in the inner surface of the container comprising the portions of the legs 22 bent out and down wherein the first section portion comprising the portion of the legs 22, first bent up and the second section are elastically deformable to brace the getter within the container by providing a lateral force against the container. The getter is braced in the first section through its connection to the first section. The difference is that there is no crease in the legs 22 to define a flexurally rigid connection. However, Misono et al. (figure 3) teaches a plurality of creased legs 7 that inherently create a flexurally rigid connection at the crease. Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). As it would be beneficial to better control the deformation of the holding clip of Pohle, it would have

been obvious to modify the holding clip of Pohle so as to have a flexurally rigid connection as taught by Misono et al. so that the flexurally rigid connection and the first and second sections are elastically deformable to brace the getter in the first section and the second section in the inner surface. As to claim 2, the device of Pohle functions and therefore has its elastic force determined from its physical properties to perform its function of supporting a getter. In regard to claim 3, the flexurally rigid connection is defined as indicated above. As to claim 7, it would have been obvious to round off a leg of the device of Pohle in view of Misono et al. teaching that it is desirable to do so. As to claim 13, applicant is given Official Notice that spring steel is a well known material to form clips and its use for this purpose is within the ambit of one having ordinary skill in this art. As to claim 16, this claim is rejected for the reasons given above wherein the legs are discussed.

Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Pohle (US 2575835) in view of Misono et al. (US 4374344) as applied to claim 1 above, and further in view of Shaffer (US 5717290).

Further modification of the holding clip of Pohle such that it is made of wire would have been obvious in view of Shaffer (figure 6) teaching that a wire is sufficiently strong to act as a getter supporting clip.

(10) Response to Argument

- (i) Combination fails to suggest all elements of claim 1.

It is appropriate to review applicant's device versus Pohle. Figure 5 has been copied from appellant's supplement to the brief and figure 3 is from Pohle.

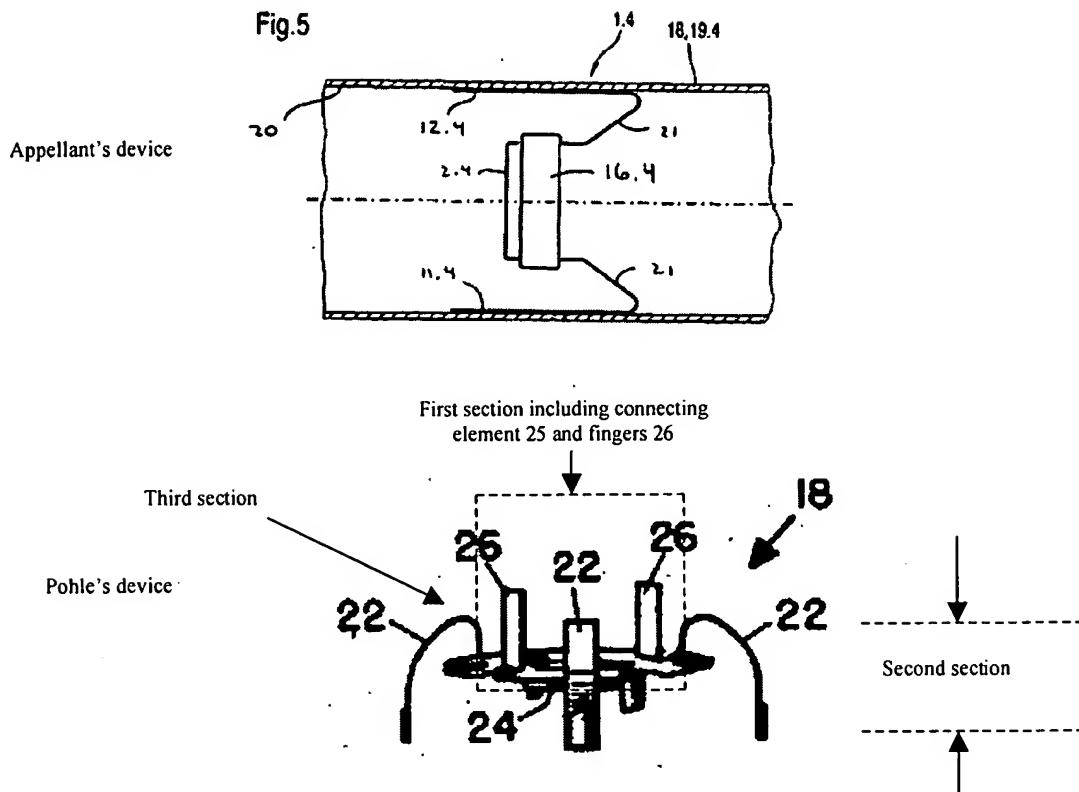


Fig. 3

The device is made of a single piece of resilient material with cantilevered fingers 26 and cantilevered legs 22. Both cantilevered legs 22 and cantilevered fingers 26 for the device shown in figure 3 are inherently resilient. In fact the legs 22 are not cylindrical, but have a lateral extent so as to preferentially flex inwardly and not laterally. While the fingers 26 may eventually be welded at the outer ends to the gettering loop, this in no way affects the inherent resilience of the fingers bracing the gettering loop. The third section identified in the rejection clearly flexes, too. The claim construction requires only that there be three identifiable resilient section, with the flexurally rigid section being between the first and second. It is submitted that three resilient

sections can be chosen from Pohle as identified above. While the legs 22 are not cylindrical, but have a lateral extent so as to preferentially flex inwardly and not laterally, Misono et al. (figure 3) teaches a plurality of creased legs 7 that inherently create a flexurally rigid connection at the crease while still permitting an inward resilient bending at the crease. It is therefore submitted that the applied references suggest all elements of claim 1.

(ii.) No reasonable expectation of success that combination results in claim 1.

Pohle provides a teaching wherein the legs 22 are not cylindrical, but have a lateral extent so as to preferentially flex inwardly and not laterally. Misono is utilized so as to show that it is well known to have an even sharper crease than that of Pohle, that inherently create an even clearer flexurally rigid connection at the crease. Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). As it would be beneficial to better control the deformation of the holding clip of Pohle, it would have been obvious to modify the holding clip of Pohle so as to have a flexurally rigid connection as taught by Misono et al. so that the flexurally rigid connection and the first and second sections are elastically deformable to brace the getter in the first section and the second section in the inner surface. This provides greater stability of position and Pohle indicates in column 1, line 50 through column 2 ,line 4 that configuration of the legs for positioning is a variable known to be important to consider so as to prevent scraping of the tube:

In Figure 3 the legs 22 are shown with the necessary bends to produce a lateral force on the side walls of the cathode ray tube 11. The legs 22, besides being bent first up, then out and down, are also creased lengthwise at the portions near their extremities. These creases cause the extremities of the legs 22 to fit more closely the near wall of the tube 11 and prevent the legs from scraping the dixonac coating 17 off of the wall of tube 11.

It is submitted that there is sufficient reason to suggest that the combination would render obvious the claim construction of claim 1.

(iii.) No motivation to combine Pohle with Misono in the manner suggested.

Applicant argues that since the Pohle is directed to centering and Misono is directed to ensuring that a film remains in contact with the spacer that there can be no motivation to combine the references to arrive at the claimed invention. In response it is submitted that centering or proper placement is part of what takes place in the teaching of Misono, after all, an electron gun must be properly positioned and the legs 7 forming a "spacer" provide a biasing force to the gun 6 that must be balanced so as to allow the gun to function properly and that is what "spacers" do.

It is submitted that the rejection provides motivation to combine Pohle and Misono and that this motivation is also discussed in the above section (ii.) in answer to appellant's argument therein.

(iv.) Shaffer is only asserted with respect to dependent claim 12.

This is agreed with.

As appellant indicates, all claims stand or fall with claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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